

### **REMARKS**

Pursuant to the non-final Office Action mailed November 25, 2008, the Request for Continued Examination (RCE) as previously filed July 3, 2008 has been entered. Claims 1-12 have been rejected by the present Office Action. After entry of the present amendment, Claims 1 – 12, and 71 – 80 are pending in the application. No additional claim fees are believed to be owed. The present amendment amends independent claim 1 and dependent claims 5 – 7, 10, and 11 to clarify the scope of the claimed inventions. Furthermore, new claims 71 – 78, which correspond to claims 1 – 8 have been added. Reconsideration of the application in view of the present amendment and following remarks is respectfully requested.

#### **Claim Objections**

The Office Action objected to claim 11 under 37 C.F.R. 1.75(c) as allegedly failing to further limit the subject matter of a previous claim. Claim 11 has been amended to clarify the element “the at least one display is operable to further output content based at least in part on the consumer’s image”.

Further, the Office Action objected to claims 5 - 7 and 10 due to an alleged informalities. To clarify the scope of the claimed inventions, claims 5 - 7 and 10 have been amended to clarify that a “container” is a “product container, and “containers” are “product containers”.

For at least the above reasons, the claim objections are believed to be traversed.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 1 and 11 were rejected under 35 U.S.C. § 112, second paragraph, as not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Claim 11 has been amended to omit the term “or”, and the above rejection is believed to be traversed with respect to amended claim 11. With respect to claim 1, the term “either” has been omitted, and amended claim 1 is believed to traverse the above rejection since the claim scope is believed to be definite in scope since “validation of the consumer or validation of payment information” means validation of only one of the consumer or payment information.

Claim Rejections Under 35 U.S.C. § 103

Claims 1 - 12 were rejected under 35 U.S.C. §103(a) as being obvious over Walker, U.S. Patent Publication No. 2005/0060062 (“Walker”). To clarify the scope of the claimed inventions, independent claim 1 has been amended to include the element, “the at least one display is operable to output customized marketing content based at least in part on the consumer’s presence and further based at least in part on the consumer’s identity” (underlining supplied). The amendment is supported by the Applicants’ specification in at least, for example, Paragraphs [0047] – [0048] as follows: “According to one aspect of the invention, marketing content displayed on the display 205 is based in part on the presence or absence of a consumer near the AIPC 200. ... According to one embodiment of the invention, the at least one sensor 230 is capable of communicating with an active or passive RF tag or smart card near the AIPC 200. This permits the AIPC 200 to not only identify the general presence of a person, but to access content on the RF tag or smart card, such as the identity of a consumer. Additional material that may be received from a smart card or RF tag may include information such as a consumer’s purchase history, which may be used to customized content shown on the display of the AIPC as the consumer approaches it.” Furthermore, the amendment is supported by the Applicants’ specification in at least, for example, Paragraph [0049] as follows: “For instance, upon the motion detector 230 detecting the presence of a consumer, the digital camera 215 may take a picture that is incorporated into media content displayed on the display 205.” In contrast, *Walker* relates to displaying price substitutes or coupons based merely on detecting the presence of a customer irregardless of the identity of the customer. *See Walker* paragraphs [0176] to [0189]. *Walker* appears to be concerned with either pricing or authorizing payments for a product purchase based on detected “environmental conditions” such as temperature or foot traffic (*see Walker*, paragraph [0065]), whereas the Applicants’ claimed invention relates to outputting customized marketing content based at least in part on the consumer’s presence and further based at least in part on the consumer’s identity. While the vending machine in *Walker* may adjust pricing for a product to fluctuate with the number of people, i.e. an increase in foot traffic could trigger an increase in price and impede a decrease in price, *Walker* fails to teach or suggest the use of identity to output customized marketing content. *See Walker*, paragraph [0065]. Furthermore, *Walker* appears to teach away from any use of identity to output

customized marketing content, since *Walker* is concerned with “environmental” conditions such as temperature and foot traffic, rather than personalized conditions, such as the presence of a particular identity of a customer or individual.

For at least the reasons provided above, the cited references, either alone or in combination with each other do not teach or disclose each and every element of amended independent claim 1, and therefore amended claim 1 should be allowable over the cited references.

Claims 2 – 12 are ultimately dependent from claim 1, for which arguments of patentability have been provided above. If independent claim 1 is in condition for allowance, then dependent claims 2 - 12 should also be in condition for allowance.

#### Newly Added Claims 71 – 80

New claims 71 – 80 have been added by the present amendment. Newly added independent claim 71 corresponds with amended independent claim 1. Newly added dependent claims 72 – 78 correspond with respective pending claims 2 – 8. Arguments with respect to patentability of claims 1 – 8 have been provided above. If pending claims 1 – 8 are in condition for allowance, then corresponding new claims 72 – 78 should also be in condition for allowance.

**CONCLUSION**

It is not believed that extensions of time or fees for addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,

/Christopher J. Chan/  
Christopher J. Chan  
Attorney for the Assignee  
Reg. No. 44,070

**DATE: 4 FEBRUARY 2009**

SUTHERLAND ASBILL & BRENNAN LLP  
999 Peachtree Street NE  
Atlanta, Georgia 30309-3996  
Telephone: (404) 853-8049  
Facsimile: (404) 853-8806  
(RC#242765)

Attorney Docket No.: **25040-0951**